

Appellant has had several prior appeals to the Board. Her September 14, 2000 compensation claim was accepted for bilateral carpal tunnel syndrome. In an August 2, 2002 decision, the Board reversed an Office decision that suspended appellant's compensation benefits

for failure to participate in vocational rehabilitation.¹ In a December 4, 2003 decision, regarding appellant's claim for an emotional condition, the Board remanded the case for further development of the medical evidence.² In an August 13, 2004 decision, the Board found that the Office did not meet its burden of proof to terminate compensation benefits.³ In an April 13, 2005 decision, the Board reversed an Office decision and found that the medical evidence established that appellant sustained depression which was contributed to by an accepted work factor.⁴ In an April 3, 1996 decision, the Board affirmed a June 27, 2005 Office decision and found that the evidence did not support expanding the emotional condition claim.⁵ In a July 11, 2006 decision, the Board affirmed an Office decision denying appellant's claim that she developed bilateral cubital tunnel syndrome, shoulder, foot, leg, neck or lower back conditions in the performance of duty.⁶ On May 19, 2006 the Office terminated appellant's compensation for her accepted bilateral carpal tunnel syndrome and emotional condition. In a June 14, 2007 decision, the Board found that the Office did not meet its burden of proof to terminate compensation benefits.⁷ The facts of the case are set forth in the Board's prior decisions and are incorporated herein by reference.

Appellant submitted a letter to the Office dated June 30, 2007 and requested the status of her compensation as no action had yet been taken since the Board's June 14, 2007 decision reversing the Office's decision terminating her compensation. She submitted a report from Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon, dated August 13, 2007, who treated appellant for recurrent bilateral hand numbness and tingling. Dr. Ogunro noted that appellant had symptoms since 2002 and presented with right middle finger pain. He noted findings of positive Phalen's test bilaterally, positive Tinel's sign left more so than on the right, mild subluxation over the cubital on the left and normal range of motion on the left and right. Dr. Ogunro noted that nerve conduction velocity tests dated November 18, 2006 was normal. He diagnosed bilateral carpal tunnel syndrome with early trigger on the right middle and little finger. Dr. Ogunro noted the splints were helping. He stated that he was surprised appellant was not working as he released her to regular duty as a claims examiner with intermittent breaks from keying. Dr. Ogunro noted that this was discussed with appellant at length.

In a letter to Dr. Ogunro dated September 14, 2007, the Office noted receipt of his August 13, 2007 report and requested clarification as to whether appellant could return to regular duty as a claims examiner. It attached a CA-17 form that sets forth a listing of the intermittent physical requirements for appellant's claims examiner position and provided that the position included keyboarding intermittently for six hours per day. The Office noted that Dr. Ogunro's

¹ Docket No. 02-0127 (issued August 2, 2002).

² Docket No. 03-1447 (issued December 4, 2003).

³ Docket No. 03-1592 (issued August 13, 2004).

⁴ Docket No. 04-1197 (issued April 13, 2005).

⁵ Docket No. 05-1623 (issued April 3, 2006).

⁶ Docket 05-1722 (issued July 11, 2006).

⁷ Docket No. 06-1309 & 06-1153 (issued June 14, 2007).

report indicated that appellant could return to regular duty as a claims examiner with intermittent breaks. In an undated form received October 1, 2007, Dr. Ogunro noted with a checkmark “yes” that appellant could return to regular duty as a claims examiner. In accompanying September 26, 2007 CA-17 form, he indicated that appellant could perform full time the duties listed on the form, which included keying for up to six hours daily.

Appellant submitted a work capacity evaluation from Dr. Ogunro dated August 13, 2007 who diagnosed carpal tunnel syndrome. Dr. Ogunro noted that appellant could work eight hours per day but was not capable of performing her usual job and noted “no keying for more than four hours intermittent only.” He noted maximum medical improvement had not been reached. In a duty status report dated September 26, 2007, Dr. Ogunro diagnosed carpal tunnel syndrome and noted that appellant could return to work full time. He noted restrictions on lifting/carrying limited to five pounds for one hour per day intermittently, sitting limited to six hours per day intermittently, standing and walking limited to two hours per day intermittently, no climbing or kneeling, bending and stooping limited to one hour per day intermittently, twisting, pulling/pushing and simple grasping limited to two hours per day intermittently, fine manipulation including keyboarding limited to six hours per day intermittently and reaching above the shoulder limited to two hours per day intermittently.

On November 20, 2007 the Office proposed to terminate appellant’s wage-loss compensation benefits on the grounds that Dr. Ogunro’s reports established that appellant could return to full-time work regular duty as a claims examiner with intermittent breaks from keying and the CA-17 provided keyboarding is necessary up to six hours per day intermittently.

Appellant submitted a November 29, 2007 statement asserting that she could not perform the job duties of a claims examiner because it required keyboarding. She attached documents previously of record from Dr. Ogunro supporting that she could not key for more than four hours intermittently. Appellant submitted a report from Dr. Ogunro dated November 29, 2007 who treated her for follow-up evaluation for recurrent bilateral hand numbness and tingling. Dr. Ogunro noted that appellant reported that she did not resume work because she was not offered work within her restrictions. He clarified that appellant could work eight hours per day but she should not key in excess of four hours per day with intermittent breaks. Dr. Ogunro noted evaluation of the right and left hand revealed negative Tinel’s sign, positive Phalen’s sign, and sensation to light touch was diminished in the median distribution. Range of motion was normal in both wrists while triggering of right middle and little fingers had subsided.

In a letter to Dr. Ogunro dated December 20, 2007, the Office noted receipt of his September 26 and November 29, 2007 reports and requested clarification as to whether appellant was capable of performing the full functions of the claims examiner position and noted attaching a list of the physical requirements.⁸ In a response received on January 22, 2008, Dr. Ogunro noted with a checkmark “yes” that appellant could return to regular duty as a claims examiner with intermittent breaks.

Appellant submitted a September 26, 2007 duty status report from Dr. Ogunro, previously of record.

⁸ This document was not attached to the correspondence in the file before the Board.

In an electronic mail from the claims examiner to the employing establishment dated January 24, 2008, the claims examiner noted appellant's physician confirmed appellant was capable of fine manipulation intermittently up to six hours per day which includes keyboarding with intermittent breaks. The claims examiner requested that the employing establishment confirm that the position of claims examiner provides intermittent breaks from keyboarding. In electronic mail correspondence dated January 25, 2008, the employing establishment responded noting that the claims examiner position allows several breaks from keyboarding, including breaks from the independent action of using the telephone, signing documents and placing them in envelopes, reading documents, meeting with walk-in claimants and making copies. The employing establishment indicated that the claims examiner independently manages their own workday activities which provides an opportunity to take independent breaks from keyboarding at their workstation in addition to a 15-minute break in the morning and afternoon and a 30-minute lunch break.

In a January 25, 2008 decision, the Office terminated appellant's wage-loss benefits effective February 16, 2008 finding that the weight of the medical evidence, as represented by Dr. Ogunro, established that appellant had no continuing disability and could return to work full time with restrictions. It noted that Dr. Ogunro provided evidence that appellant could work full time, regular duty as a claims examiner with intermittent breaks from keyboarding. The decision did not affect medical benefits.⁹

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹⁰ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹¹

ANALYSIS

The Board finds that the Office improperly terminated appellant's wage-loss compensation based on the opinion of Dr. Ogunro. The Office found that his report established that appellant was able to return to her regular duties. The record indicates that appellant's regular duties as a claims examiner require up to six hours of intermittent keyboarding. The Office, in proposing to terminate appellant's compensation, relied on Dr. Ogunro's narrative report of August 13, 2007 in which he released appellant to regular duty with intermittent breaks, and a form report received October 1, 2007 where he generally noted with a checkmark "yes" that appellant could return to regular duty as a claims examiner; however, in neither report did he specifically note the amount of keyboarding appellant could perform. The Office also referenced Dr. Ogunro's duty status report dated September 26, 2007 providing restrictions on fine

⁹ The decision did not address appellant's accepted emotional condition.

¹⁰ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

¹¹ *Mary A. Lowe*, 52 ECAB 223 (2001).

manipulation including keyboarding limited to six hours per day intermittently. The Board notes that Dr. Ogunro also issued an August 13, 2007 work capacity evaluation noting that appellant could only keyboard for four hours daily, intermittently.

Subsequent to the November 20, 2007 notice of proposed termination, appellant submitted a November 29, 2007 report from Dr. Ogunro who clarified that appellant could work eight hours per day but restricted her from keying in excess of four hours per day with intermittent breaks. Thus, this report clearly indicates that the keying requirement of a claims examiner position exceeded the restriction set forth by Dr. Ogunro. The Office sought further clarification on December 20, 2007, when it asked Dr. Ogunro whether appellant was capable of performing the full functions of the claims examiner position and noted attaching a list of the physical requirements. However, the attachment noting physical requirements is not of record. In a response received on January 22, 2008, Dr. Ogunro noted with a checkmark “yes” that appellant could return to regular duty as a claims examiner with intermittent breaks. The Board finds that the evidence is insufficient to establish that appellant is capable of performing the regular duties of her claims examiner position. The medical evidence is unclear whether appellant can keyboard for only four hours a day or six hours a day intermittently. Dr. Ogunro has provided differing responses. His most recent report in which he specifically addresses keyboarding is his November 29, 2007 report which restricts keyboarding to four hours daily. Dr. Ogunro’s report received on January 22, 2008, while indicating that appellant can perform regular duties with intermittent breaks, does not specifically address the extent to which she may use a keyboard and a list of duties, which the Office noted forwarding to the physician, is not of record. Thus, the report received on January 22, 2008 does not clarify the discrepancy regarding keyboarding and is insufficient to establish that appellant can return to her regular duties.

Consequently, the Office did not meet its burden of proof in establishing that appellant could return to her regular duties prior to terminating wage-loss benefits.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof to terminate wage-loss benefits effective February 16, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 25, 2008 is reversed.

Issued: April 8, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board